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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,695	02/25/2004	Neal Dulaney	35269US1	3686
116	7590	03/02/2006	EXAMINER	
PEARNE & GORDON LLP 1801 EAST 9TH STREET SUITE 1200 CLEVELAND, OH 44114-3108			VALENTI, ANDREA M	
			ART UNIT	PAPER NUMBER
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DATE MAILED: 03/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/786,695	Applicant(s) DULANEY, NEAL	
	Examiner Andrea M. Valenti	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 9, 12-18 and 30-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 9, 12-18 and 30-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 9, 12, 13, 16-18 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,542,451 to Foster In view of FILTERSTAR, S/ENS:841553-01 Inlet pipe; S/ENS:841545-01 Outlet pipe; 3 pages.

Regarding Claims 1 and 18, Foster teaches a modular water flow system for an aquarium (Foster Fig. 2 and 6) comprising: a pump (Foster #27); a water intake system (Foster #28) wherein the water intake system pulls water in from the aquarium through multiple inlets (Foster Fig. 10a'-10c' outgoing arrows) which customizably pull water in from multiple locations of the aquarium due to a propulsive force created by the pump; a water return system (Foster Fig. 2 #29) wherein the water return system permits the water to return to the aquarium from multiple outlets customizably located in multiple locations of the aquarium (Foster Fig. 10a'-10c' arrows incoming and Fig. 13 #61); at least one valve assembly (Foster Fig. 3 #17 and Fig. 6 #58) to manage at least one of the water return system and the water intake system to regulate a flow rate.

Foster teaches the water intake and water return systems have exterior portions outside of the tank and multiple interchangeable components (Foster Fig. 2 versus Fig. 6), but is silent in an overwall assembly unit and that the water intake system and water

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return system have interior portions inside the aquarium and multiple attachment mechanisms. However, FILTERSTAR teaches a modular aquarium that regulates flow rate (FILTERSTAR, page 3 English Included section) with an overwall assembly unit (FILTERSTAR page 3 Fig. D and page 1 and 2) which couples the interior portions of the modular water flow system to the exterior portions of the modular water flow system via a link wherein the link comprises at least one inlet port which is connected to at least one of the interior portions of the modular water flow system and at least one outlet port which is connected to at least one of the exterior portions of the modular water flow system, and the at least one inlet port is rotatably coupled to the corresponding interior portion of the modular water flow system; multiple interchangeable components connected to manipulate the flow of water into a desired pattern; and multiple attachment mechanisms (FILTERSTAR page 3 Included, spray bar and outlet nozzle) coupled to the interchangeable components which attach the interchangeable components to the aquarium (FILTERSTAR page 3 Included, set of suction cups). It would have been obvious to one of ordinary skill in the art to modify the teachings of FILTERSTAR with the teachings of Foster at the time of the invention since the modification is merely an engineering design choice involving the selection of a known alternate equivalent water intake and return mounting systems selected for the customizable features and the ability to adapt to different size and design tanks as taught by FILTERSTAR (FILTERSTAR page 3 Easy Installation) and for ease of maintenance so that the system can be detached from the tank without having to possibly have to drain the tank.

Regarding Claim 2, Foster as modified teaches wherein the water intake system, the water return system, and the at least one valve assembly are coupled by connecting pieces (FILTERSTAR page 1-3 and Fig. D and Foster Fig. 6 #59 and 49 are connected by a series of modular pipes).

Regarding Claim 3, Foster as modified teaches wherein the connecting pieces further comprise at least one of the following: a coupling bracket, a tee bracket, and an elbow bracket (Foster Fig. 6 shows an elbow bracket attached between #47 and 49 and FILTERSTAR teaches elbows in Fig. D page 3).

Regarding Claims 4 and 5, Foster as modified teaches wherein the connecting pieces are coupled to an attachment mechanism (FILTERSTAR page 3 Included, suction cups).

Regarding Claim 9, Foster as modified teaches the outlet port is rotatably coupled to the corresponding exterior portion of the modular water flow system (FILTERSTAR page 3 and page 2).

Regarding Claim 16, Foster as modified teaches wherein the water return system further comprises at least one spray bar having at least one aperture (Foster Fig. 13 #60 and FILTERSTAR page 3 Fig. G).

Regarding Claim 17, Foster as modified teaches at least one pipe (Foster Fig. 6 section between #47 and elbow of #49 and FILTERSTAR Fig. D) connected on each end by at least one connecting piece and located between the water intake system and the water return system.

Regarding Claim 30, Foster as modified teaches the inlet portion is rotatably coupled to the interior portions of the modular water flow system to facilitate positioning of the modular water flow system (FILTERSTAR page 1 and page 3).

Regarding Claim 31, Foster as modified teaches at least one valve assembly to manage at least one of the water return system and the water intake system to regulate a flow rate wherein the valve assembly further comprises one or more openings and a regulator which regulates the rate at which water enters the water intake system or the rate at which water returns from the water return system. (Foster Col. 10 line 10-12 and element #17 is attached to the motor Col. 6 line 11-14 and motor speed is adjustable Col. 6 line 42-49; FILTERSTAR page 3 Included "flow adjustment valve").

Regarding Claim 32, Foster as modified teaches wherein the regulator further comprises an adjustment mechanism adjustable by an aquarist, which regulates the rate at which the water enters the water intake system or the rate at which the water returns from the water return system (Foster Col. 10 line 10-12 and element #17 is attached to the motor Col. 6 line 11-14 and motor speed is adjustable Col. 6 line 42-49 the aquarist can adjust valve #58 and the motor speed; FILTERSTAR page 3 Included "flow adjustment valve" can be adjusted by the valve handle).

Regarding Claim 12, Foster as modified teaches at least one cap which can seal at least one of the one or more openings (Foster #17 as it rotates seals openings).

Regarding Claim 13, Foster as modified teaches wherein the valve assembly further comprises at least one attachment that fastens to the opening of the valve assembly (Foster Fig. 1 #13).

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,542,451 to Foster In view of FILTERSTAR, S/ENS:841553-01 Inlet pipe; S/ENS:841545-01 Outlet pipe; 3 pages as applied to claim 31 and 13 above, and further in view of U.S. Patent No. 6,125,791 to Gunderson et al.

Regarding Claims 14 and 15, Foster as modified teaches customizability, but is silent on the at least one attachment includes at least one of a ball/socket assembly of hydrojet, wherein the ball/socket assembly comprises a number of interlocking balls and sockets that can be rotated in at least one direction to allow customizability in water flow pattern. However, Gunderson teaches an aquarium with a ball and socket assembly (Gundersen #62B, 65B, 62B and 64B). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Foster with the teachings of Gunderson at the time of the invention since the modification is merely the selection of a known alternate equivalent discharge attachment selected for the advantage of controlling the direction of the outflow. It is general knowledge of one of ordinary skill in the art to be motivated to have adjustability/flexibility for the ergonomic ease of fitting within certain space restrictions and for ease of performing maintenance on the system with minimized disruption to the fish. Merely making a modification for the means of adjustability does not present a patentably distinct limitation [*In re Stevens*, 212 F.2d 197, 198, 101 USPQ 284, 285 (CCPA 1954)].

Response to Arguments

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Applicant's arguments with respect to claims 1-5, 9, 12-18 and 30-32 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,755,981.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 571-272-6895. The examiner can normally be reached on 7:00am-5:30pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Andrea M. Valenti
Patent Examiner
Art Unit 3643

27 February 2006